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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,177

03/15/2004

Richard S. Belliveau

1469

27550

7590

01/03/2008

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EXAMINER

LEE, Y MY QUACH

ART UNIT

PAPER NUMBER

2885

MAIL DATE

DELIVERY MODE

01/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,177

Applicant(s)

BELLIVEAU, RICHARD S.

Examiner

Lee Y Quach

Art Unit

2885

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed September 10, 2007 have been fully considered.

With respect to the arguments of In Re Doyle, Applicant argues that the In re Doyle test applies to any linking claims rather than just Genus linking claims.

This is not found persuasive. Whether the reissue claims 13 to 82 are subcombination linking claims or different types of linking claims, it is irrelevant because MPEP 1412.01 Page 1400-17 August 2005 states that *a linking claim*, according to In Re Doyle, is a claim broad enough to read on the invention elected (and patented) together with the invention not elected.

With respect to the arguments of Ex Parte Okamoto, Applicant argues that there was an original election requirement in the original prosecution.

The original election requirement in the original prosecution of Ex Parte Okamoto is noted.

Applicant further argues that Applicant never filed the reissue claims during the original prosecution, consequently, the original examiner never restricted Applicant's current claims and Applicant therefore never filed a divisional application directed to them, and thus as was the case in Okamoto, "it can not be argued that applicant's failure to file a divisional application to such subject matter was a deliberate act". Applicant asserts that the Board's decision in Ex Parte Okamoto is controlling here.

This is not found persuasive because the subject matter of different wavelength intensities controlled by the electronic control circuitry as claimed was subject to restriction in the original prosecution. Applicant's attention is directed to claims 20 to 22

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and 39 in the original application where they claim electronic control circuitry for controlling the wavelength intensity of the light sources which was restricted away from the mechanical means such as a flexing device to flex the flexible substrate with the light sources mounted thereon to control different light directions as evidence by the patent claims. Although the control circuitry is further defined in the reissue claims but this does not remove or prevent the fact that this control circuitry to control the different wavelength intensities of the light sources was presented and restricted in the original prosecution, and by failing to pursue a divisional application regarding this subject matter, Applicant cannot now undo the election by contending, on the present record, that the subject matter as claimed in the reissue claims, such that the control circuitry for controlling different wavelength intensities of the light sources, had never been filed before in the original prosecution and therefore failure to file a divisional application to such subject matter was not a deliberate act. Accordingly, the decision in *Ex parte Okamoto* can not be controlled here and has no bearing to Applicant's reissue application.

With respect to the mutually exclusive of the originally elected and non elected subject matter, Applicant argues that both the elected and non elected species all involve overlapping claim limitations because both the elected and non elected species utilize light emitting diodes.

This is not found persuasive because the patent and the reissue application are lighting patent and application, these light emitting diodes would naturally be claimed in all of the claims. The subject matter of the reissue claims are directed to control circuitry for controlling different wavelength intensities of the light sources while the subject

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matter of the patent claims are directed to a plurality of light sources mounted on a flexible substrate with a flexible device for flexing the flexible substrate by applying pressure to the substrate to cause the substrate to deform in a first state and to not deform in a second state to cause the light emitted from the light sources concentrated in different directions. Accordingly, the subject matter of the reissue claims and the subject matter of the patent claims are mutually exclusive. In addition, whether the claims are mutually exclusive or not mutually exclusive, this still does not remove or prevent the fact that the control circuitry to control the different wavelength intensities of the light sources was presented and restricted in the original prosecution.

With regards to the arguments regarding the reissue claims adequately supported by the patent specification and the affidavit of 37 CFR 1.132 for supporting this adequacy, the affidavit is acceptable and the arguments are found persuasive. The objection and rejection of the patent specification and claims 13 to 82 under 35 U.S.C. 112 of the previous office action are therefore withdrawn.

Reissue Applications

2. The reissue oath/declaration filed with this application is defective (see MPEP 1414) because the error attempted to be corrected is not the type of error that is correctable through reissue, the requirement under U.S.C. 251 therefore has not been met.
3. Claims 1 to 82 are rejected as being based upon a defective reissue oath or declaration under 35 U.S.C. 251 for lack of error as set forth above. The nature of the defect(s) is set forth in the discussion above in this and the previous Office action.

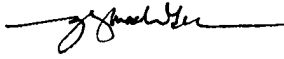
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service 571-272-2815.

Y. Q.
December 6, 2007


Y Quach Lee
Primary Examiner
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